REMARKS

Applicant has carefully reviewed the Office Action mailed March 16, 2007. In response to the Office Action, claims 1, 7, 12-13, 15-16 and 19-20 have been amended and claims 22-26 have been added. Claim 8 was previously cancelled. Accordingly, claims 1-7, and 9-26 remain pending in this application. At least for the reasons set forth below, Applicant respectfully traverses the foregoing rejections. Applicant thanks the Examiner for the courtesy of a teleconference on July 22, 2008 and the agreement to reopen prosecution upon the filing of this RCE.

As Applicants' remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicants' silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., whether a reference constitutes prior art, motivation to combine references, assertions as to dependent claims, etc.) is not a concession by Applicants that such assertions are accurate or such requirements have been met, and Applicants reserve the right to analyze and dispute such assertions/requirements in the future. Further, for any instances in which the Examiner took Official Notice in the Office Action, Applicants expressly do not acquiesce to the taking of Official Notice, and respectfully request that the Examiner provide an affidavit to support the Official Notice taken in the next Office Action, as required by 37 CFR 1.104(d)(2) and MPEP § 2144.03. Applicants respectfully request reconsideration of the present application in view of the above amendment, the new claims, and the following remarks.

Claim Rejections – 35 U.S.C. § 103

Claims 1-5, 7, 9, 10, 12-15, and 17-21 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Eaton Corporation (hereinafter "Eaton"), "Eaton Truck Components Bulletin, TRIB-9701", 1997, including the DAA program; in view of *Creger*, US 5,848,371. Applicant respectfully traverses the rejection.

"To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). M.P.E.P. § 2143.03. Accord. M.P.E.P. § 706.02(j).

"A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out by the reference." *In re Gurley*, 27 F.3d 551, 553, 31 USPQ2d 1130, 1131 (Fed. Cir. 1994).

Independent Claims 1, 7 and 12

Independent claims 1, 7 and 12 positively recite "determining a driveline inertia resulting from an oscillatory speed effect of the vehicle driveline based on the entered measurements." In contrast, neither Eaton nor Creger teach this recitation. Support for this recitation can be found, at least, in paragraphs [0003] and [0004].

Thus, the combination of Eaton and Creger does not teach every limitation of independent claims 1, 7, and 12, as required in *In re Royka*.

Dependent claims 2-5, 9, 10, 13-15, and 17-21 teach independently patentable subject matter, although they are also patentable merely by being dependent on an allowable base claim. As an example, claim 20 recites "wherein the driveline inertia is a coast inertia," whereas the Examiner has not articulated any teaching within the prior art that includes the term 'coast'. As another example, claim 13 recites "enabling a user to interactively change the entered measurements of the desired vehicle driveline configuration to determine the torsional acceleration of the vehicle driveline configuration."

Conclusion

In view of the above remarks, the pending application is in condition for allowance. If, however, there are any outstanding issues that can be resolved by telephone conference, the Examiner is earnestly encouraged to telephone the undersigned representative.

It is believed that any additional fees due with respect to this paper have already been identified in any transmittal accompanying this paper. However, if any additional fees are required in connection with the filing of this paper that are not identified in any accompanying transmittal, permission is given to charge our Deposit Account No. 18-0013, under Order No. 65856-0025 from which the undersigned is authorized to draw. To the extent necessary, a petition for extension of time under 37 C.F.R. §1.136 is hereby made, the fee for which should also be charged to this Deposit Account.

Dated: July 22, 2008

Respectfully submitted,

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